



Public Hearing Supplemental Information
NHTSA Post Hearing Submission
(7 Pages)

The Honorable Deborah A. P. Hersman
Chair, Board of Inquiry
National Transportation Safety Board
490 L'Enfant Plaza East, S.W.
Washington, DC 20594

Dear Member Hersman:

Thank you for the invitation extended to the parties to provide the National Transportation Safety Board's (NTSB) Board of Inquiry with additional information regarding the NTSB Hearing on the fatal motorcoach crash near Victoria, Texas, held on October 7-8, 2008. Attached is a supplemental statement from the National Highway Traffic Safety Administration (NHTSA) to clarify NHTSA's official position on several issues raised during the hearing by the NTSB Board of Inquiry and staff, and to ensure the record fully reflects the nature and extent of NHTSA's enforcement program.

Sincerely,

Claude Harris

**NHTSA'S SUPPLEMENTAL STATEMENT
For The Record of the NTSB Victoria, TX Bus Crash Hearing**

This supplemental statement is provided to clarify NHTSA's official position on several issues raised in the hearing by the NTSB Board of Inquiry and staff and to ensure the record fully reflects the nature and extent of NHTSA's enforcement program.

1. *There is a statutory requirement for manufacturers of motor vehicles and motor vehicle equipment to certify the compliance of those products with applicable safety standards.*
 - The self-certification process that is used in the United States to achieve compliance with the Federal motor vehicle safety standards (FMVSS) was established in response to a Congressional mandate. In the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. Chapter 301 (the Vehicle Safety Act), Congress directed the Secretary of Transportation to prescribe motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. Congress made it unlawful for a person to "manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured after the date an applicable [FMVSS] takes effect unless the vehicle or equipment complies with the standard and is covered by a [manufacturer's] certification."
 - Under the Vehicle Safety Act, NHTSA does not approve or certify the compliance of motor vehicles or motor vehicle equipment subject to the FMVSS. Instead, the fabricating manufacturer of those products must provide the certification before the products are offered for sale. Over the years that it has been in place, the self-certification process has achieved a high level of compliance with applicable FMVSS, without subjecting manufacturers to the expense and time delays associated with the "type approval" system used in many foreign countries, in which the manufacturer must furnish a prototype vehicle and specifications to a government agency for testing and evaluation to establish compliance with applicable standards.
 - A manufacturer can face substantial civil penalties for falsely certifying that a motor vehicle or item of motor vehicle equipment complies with an applicable FMVSS. Importers also face civil penalties for importing noncompliant vehicles or equipment. Currently, those penalties can be as high as \$6,000 for each violation with a maximum of \$16,375,000 for a series of violations.
2. *The overwhelming majority of vehicles imported into the United States are originally manufactured to conform to all applicable FMVSS and are so certified by their manufacturers.*
 - In 2006, 251 million passenger vehicles were registered in the United States. Of these, approximately 0.3 percent or 821,959 were buses. According to *Automotive News*, a trade publication, approximately 16 million light vehicles are sold annually and of this total, almost 7.7 million were passenger cars. Imports comprise

approximately 29 percent of the passenger cars that are sold in the U.S. Because of the recent economic downturn in the automotive industry, the above statistics will be reduced in 2008.

- U.S. Department of Commerce statistics show that an average of 5,500 motor coaches has been imported in the U.S. for each of the past four years. The majority of these vehicles were declared by their importers as vehicles that were manufactured to comply with all applicable FMVSS and were certified by their original manufacturers. In addition, a few motor coaches were imported on a temporarily basis for purposes such as research, investigations, demonstrations, or training.

3. *Entry of vehicles engaged in international traffic.*

- In 2005, more than 7 million bus passengers entered the United States. Of these, more than 3 million bus passengers entered the U.S. from Mexico. Under 19 U.S.C. § 1322, Congress exempted certain vehicles from the application of U.S. Customs laws if such vehicles were engaged in "International Traffic." This statute is implemented by 19 CFR 123.14, which states that foreign-based buses engaged in "International Traffic" may be admitted without formal entry. Because such border crossings by buses engaged in "International Traffic" do not result in formal importations, NHTSA receives no information from Customs and Border Protection (CBP) regarding the presence of these vehicles in the U.S. According CBP data, the bus involved in the Victoria, TX incident crossed the border into the United States from Mexico on 28 occasions between September and December 2007. On each of these 28 crossings, the bus entered the United States without filing a formal entry or DOT HS-7 Declaration form.
- Although NHTSA was unaware of these crossings, the agency does conduct joint investigations with Immigration and Customs Enforcement (ICE), CBP, and the Environmental Protection Agency (EPA) when it learns of vehicles being imported that do not have labels certifying compliance with all applicable FMVSS affixed by their original manufacturer. During the past six years, NHTSA conducted investigations on approximately 1,200 motor vehicles that resulted in numerous vehicles being denied entry into the U.S., being ordered to be delivered to the ports of entry for exportation, or being seized.

4. *NHTSA has authority to regulate the manufacture and importation of motor vehicles, but not the operation of motor vehicles on public roads.*

- NHTSA's statutory authority extends to the manufacture and importation of motor vehicles, but not to the operation of motor vehicles on public roads. That responsibility is exercised instead by the Federal Motor Carrier Safety Administration (FMCSA) insofar as commercial motor carriers are concerned, and by each of the individual states. Motor carriers and other operators are therefore not subject to regulation by NHTSA unless they are engaged in the act of manufacturing or importing motor vehicles.

5. *NHTSA conducts compliance tests on motor vehicles and equipment offered for sale in the United States, including some tests on motorcoach components.*

- NHTSA's mission is to save lives, prevent injuries, and reduce economic costs due to road traffic crashes. The agency's enforcement activities, which are directed at vehicles and equipment items, are structured so that they will have the greatest impact on safety. Consistent with this approach, the agency spends about \$8 million each year to purchase more than 100 vehicles and conducts more than 500 crashworthiness and crash avoidance performance tests on those vehicles, and more than 1,200 performance tests on regulated equipment items to assure compliance with all applicable standards.
- In using its limited dollars to choose vehicles to crash test, NHTSA looks for vehicles that are in greatest use and are most likely to be involved in a crash. In 2005, 85 bus passengers were fatally injured in highway crashes (0.1 percent of the total highway fatalities). In contrast, passenger car occupants account for 42 percent of highway fatalities (about 750 times greater than the fatality rate for bus passengers).
- Because motor coaches are subject to only 16 FMVSS, most of which are related to crash avoidance standards, it would not be productive for NHTSA to expend funds to purchase motor coaches for dynamic compliance testing. However, the agency does purchase motor coach equipment items (lighting components and tires) for compliance testing.
- As part of its enforcement program, NHTSA's Office of Vehicle Safety Compliance (OVSC) also inspects regulated equipment items at industry trade shows and conducts "spot checks" of vehicles and equipment items at retailers to assure compliance with all applicable FMVSS. In the event of a test failure, OVSC conducts an investigation to determine whether a noncompliance exists. NHTSA will ask the manufacturer and/or importer to provide the basis for its certification that the vehicle or equipment item complies with the relevant FMVSS and regulations, and the agency may perform additional testing.

6. *NHTSA also conducts a comprehensive defects investigation program to address safety problems unrelated to compliance and certification.*

- Assuring compliance with the FMVSS is only part of NHTSA's enforcement mission. Even fully compliant vehicles and equipment can have safety problems revealed during use. Because motor vehicles operate in harsh conditions over many miles, the agency's monitoring for safety-related defects is important. The mission of NHTSA's Office of Defects Investigation (ODI) is to identify motor vehicles and items of motor vehicle equipment with safety-related defects and ensure that they are either repaired or removed from the nation's highways. The Vehicle Safety Act requires that when a manufacturer becomes aware that a vehicle or equipment item it has produced contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS, it must provide NHTSA, as well as owners and dealers of

the affected vehicles or equipment, with notification of the defect or noncompliance and must remedy the defect or noncompliance, usually without charge to the owner. The notification and recall process is commonly referred to as a “safety recall.”

- ODI ordinarily reviews consumer complaints that are submitted to the agency and other available information to determine whether a defect trend exists. Some of the information ODI reviews is Early Warning Reporting (EWR) information submitted by manufacturers. Under the EWR rules, manufacturers must generally report claims they receive on incidents resulting in fatalities or injuries allegedly caused by a defect in their vehicles or motor vehicle equipment items used in the United States or deaths allegedly caused by a defect in their identical or substantially similar vehicles or equipment used in a foreign country. Moreover, depending on the level of annual production and the type of product, manufacturers may also be required to provide NHTSA with information on production, property damage claims, consumer complaints, warranty claims, field reports, as well as other information.

7. *NHTSA uses its enforcement authority vigorously.*

- Since the establishment of NHTSA, there have been more than 10,000 recalls involving more than 400 million vehicles (including motor coaches) and more than 162 million equipment items. Approximately 22 percent of these recalls were NHTSA influenced, meaning that the agency’s actions caused the manufacturer or importer to conduct a recall. In 2007 alone, there were 712 recalls, the most ever. More than 14 million vehicles were recalled, and NHTSA’s investigations influenced the recall of over 9 million of those vehicles.
- Over the last five years, there have been approximately 47 recalls involving 23,700 buses and motor coaches. Of these recalls, eight were influenced by NHTSA’s Office of Defects Investigation. The recalls involved the following manufacturers: MCI, Prevost, Van Hool, Setra, Blue Bird, and BCI, and were related to steering, braking, parking brakes, suspension, windshield/wipers, transmission, electrical, fuel leaks, fires, and wheelchair lift problems. For several of these recalls, NHTSA obtained field inspection data from the FMCSA.

8. *NHTSA would "knock on the door" of a carrier operating a fleet of nonconforming motorcoaches in the United States.*

- At the hearing, Mr. Coleman Sachs was asked by a representative of the motor coach industry if he could expect NHTSA to "knock on his door" if he were operating a fleet of Volvo buses in the United States. Mr. Sachs responded "no" to this question, assuming that it related only to buses engaged in international traffic that had not actually been imported. The response would have been different if the question had been premised on the vehicles being imported. In that case, the vehicles would have to meet the FMVSS or be found eligible for importation by NHTSA and be imported by a registered importer. In the past, Mr. Sachs and NHTSA's Import and Certification Division have taken swift action upon learning that imported noncompliant motor coaches are being operated in the United States. Two years ago, Mr. Sachs received information that a German tour bus operator was conducting sightseeing tours between Canada and the United States for foreign tourists using noncompliant imported buses that were home based in New York State. Mr. Sachs quickly contacted the operator to learn how the buses were imported. The operator dispatched two representatives from Germany, who met with Mr. Sachs and his staff the following week. The representatives furnished evidence that the vehicles were engaged strictly in international traffic, which was confirmed by the U.S. Customs and Border Protection (CBP). Absent this confirmation, NHTSA was planning to take action to obtain the exportation of the vehicles, and is prepared to do so in any future case that is brought to its attention concerning imported nonconforming motor coaches that are being operated in this country. More recently, we worked with CBP to assist it in seizing certain noncompliant motorcoaches found to be operating in the United States.